

Youth Education and Safety for Kids, Inc.,
Osnard, CA
Youth Educational Sports, Inc.,
Chatsworth, CA
Young Entrepreneurs Association,
Colorado Springs, CO
Youth On Ice, Green Bay, WI
Youth Under-Served Disabilities
Empowerment Service Agency,
Philadelphia, PA

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Son of Boss Settlement Initiative

Announcement 2004-46

Section 1. Purpose and Scope of Initiative

The Internal Revenue Service announces a settlement initiative for taxpayers to resolve transactions described in Notice 2000-44, 2000-2 C.B. 255, and substantially similar transactions (Son of Boss transactions).

The Service has determined that Son of Boss transactions are abusive and were designed, marketed, and undertaken solely to create tax benefits unintended by any reasonable interpretation of the tax laws. The Service believes that it will prevail in litigation on the merits of these transactions and that the imposition of penalties will be upheld. For efficient tax administration reasons, however, the Service offers taxpayers an opportunity to resolve their civil tax liabilities under this initiative and avoid litigation.

Section 2. Terms of Initiative

(a) Tax Adjustments—

(1) Taxpayers will concede all claimed tax benefits and attributes, including basis adjustments, from the Son of Boss transaction.

(2) Taxpayers will be allowed to treat (i) their net out-of-pocket costs and fees as a long-term capital loss, or (ii) one-half of their net out-of-pocket costs and fees as an ordinary loss, in the year those costs and fees were paid or accrued. If tax benefits, including benefits attributable to those costs and fees, were claimed in a year barred by the period of limitations on assessment, the costs and fees will be allowed only to the extent they exceed the tax benefits claimed in the barred years.

(b) Application of Penalties—

(1) Taxpayers who properly disclosed their Son of Boss transaction under Announcement 2002-2, 2002-1 C.B. 304, will not pay a penalty on the underpayment attributable to that Son of Boss transaction.

(2) Taxpayers who did not properly disclose their Son of Boss transaction under Announcement 2002-2 and who:

(i) Did not directly or indirectly claim tax benefits from any other listed transaction, including any other Son of Boss transaction, will pay a penalty of 10 percent of the underpayment attributable to the Son of Boss transaction; or

(ii) Directly or indirectly claimed tax benefits from another listed transaction, including any other Son of Boss transaction, will pay a penalty of 20 percent on the underpayment attributable to the Son of Boss transaction.

For purposes of this announcement, a "listed transaction" is a transaction that is the same as, or substantially similar to, one identified by the Service under section 6011 and the Treasury regulations as of the date the taxpayer submits the Notice of Election, regardless of whether (a) the Service had identified the transaction as a listed transaction at the time the taxpayer entered into the transaction, or (b) the transaction is (or was) required to be disclosed by the taxpayer as a listed transaction pursuant to the regulations (including the temporary regulations) under section 6011.

Section 3. Eligibility Requirements

All taxpayers that claimed tax benefits in a manner described in Notice 2000-44 are eligible to participate in this initiative except:

(1) Persons who (i) organized or participated directly or indirectly in the sale or promotion of any Son of Boss transaction, (ii) received fees for organizing, selling or promoting one, (iii) were partners in a partnership, or employees of a person, that engaged in activities described in (i) or (ii) of this paragraph at the time they participated in the Son of Boss transaction, or (iv) were related to a person described in this paragraph within the meaning of section 267(b), other than section 267(b)(1), at the time they participated in the Son of Boss transaction.

(2) All partners in entities subject to the unified partnership audit and litigation provisions of sections 6221 through 6234, as enacted by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA partnerships), that include a partner described in paragraph (1) of this section who directly or indirectly claimed tax benefits in a manner described in Notice 2000-44 with respect to those TEFRA partnerships.

(3) Taxpayers who, individually or as a partner in a TEFRA partnership, are a party in a court proceeding to determine the tax treatment of the Son of Boss transaction.

(4) Taxpayers where the Service has informed the taxpayer, or the tax matters partner of a TEFRA partnership in which the taxpayer was a partner, that the Service has designated, or is considering designating, the Son of Boss transaction for litigation.

Section 4. Required Procedures for Electing Participants

(a) Notice of Election

Taxpayers participating in this initiative must notify the Service of their election by sending the Notice of Election, as set out below, on or before June 21, 2004. The Notice of Election must be sent by certified mail or designated delivery service (within the meaning of section 7502(f)) to:

INTERNAL REVENUE SERVICE
Attn: Announcement 2004-46
1901 Butterfield Road, Ste. 310
Downers Grove, IL 60515

If the taxpayer, or a TEFRA partnership in which the taxpayer was a partner, is under examination, the taxpayer also must provide a copy of the Notice of Election to the examining agent.

The Notice of Election must be prepared under penalties of perjury and:

(1) State that the taxpayer elects to participate in the settlement initiative in Announcement 2004-46;

(2) Include the taxpayer's name, taxpayer identification number (TIN), current address, and daytime telephone number, and, if under examination, the name, address, and daytime telephone number of the examining agent. If a tax practitioner will represent the taxpayer, the practitioner must provide a completed Form 2848 or other valid power of attorney;

(3) Include the name and TIN of all other entities known to the taxpayer that directly or indirectly were parties in the Son of Boss transaction, and for each TEFRA entity, the name, address, and daytime telephone number of the tax matters partner;

(4) State whether the taxpayer claims qualification for a penalty of 0 percent, 10 percent or 20 percent; and

(5) Either (i) identify all listed transactions in which the taxpayer directly or indirectly claimed tax benefits (for example, a spouse filing jointly with a participant in a listed transaction, or as a trust beneficiary that entered into a listed transaction), or (ii) state that the taxpayer did not directly or indirectly claim tax benefits in any other listed transaction.

(b) Additional Information and Documentation — 60 days

Upon receipt and review of an election to participate, the Service will notify the taxpayer by mail whether the taxpayer is eligible to participate in this initiative. The notification will include a request for additional information and documentation. The taxpayer must submit all requested information under penalties of perjury to the Service within 60 days of the date of mailing by the Service. The Service may grant an extension for good cause to taxpayers who request additional time within the 60-day period.

(c) Closing Agreement and Payment — 30 days

After receiving the requested information, the Service will prepare a closing agreement under section 7121 reflecting the terms of the settlement. The closing agreement will provide that (1) without limitation as to the otherwise applicable effect of section 7121(b), providing inaccurate information about tax benefits claimed from other listed transactions, including other Son of Boss transactions, as required in the Notice of Election, is a misrepresentation of a material fact within the meaning of section 7121(b), and (2) the taxpayer waives all defenses to the assessment and collection of the tax liabilities determined under this initiative, including the applicable penalty and interest.

The Service will mail the closing agreement to the taxpayer who must sign and return it to the Service within 30 days of the date of mailing by the Service. The Service may grant an extension for good cause to taxpayers who request additional time within the 30-day period. Full payment of the liabilities under this initiative must be made by the date the closing agreement is executed. Any taxpayer not making full payment must submit complete financial statements and agree to other financial arrangements acceptable to the Service before the Service will execute the closing agreement. A taxpayer will be ineligible to participate in this initiative if an agreement regarding an acceptable financial arrangement cannot be reached.

(d) Other Matters

(1) Denial of a taxpayer's request to participate in this initiative is not subject to judicial review.

(2) Execution of a closing agreement under this initiative does not preclude the Service from investigating any associated criminal conduct or recommending prosecution for violation of any criminal statute.

Section 5. Dispute Resolution Procedures for Nonparticipants

Appeals Office consideration will not be available for Son of Boss transactions. For all taxpayers ineligible or not participating in this initiative, the Service will (a) develop the cases, (b) disallow all tax benefits and attributes claimed from the Son of

Boss transaction, including out-of-pocket costs and fees, (c) determine appropriate penalties, including those under section 6662 or section 6663, and (d) issue a Notice of Deficiency or Notice of Final Partnership Administrative Adjustment, as appropriate.

The Office of Chief Counsel will closely coordinate Son of Boss cases by treating them as if they were designated for litigation under Chief Counsel procedures for designating cases for litigation. Likewise, in refund and TEFRA partnership suits handled by the Department of Justice, Chief Counsel expects to recommend against any settlement more favorable to the taxpayer than is provided in this initiative. Department of Justice regulations require Assistant Attorney General approval of any settlement contrary to the Chief Counsel's recommendation. Consequently, taxpayers should not expect to settle their cases on better terms if they proceed to litigation, whether in the Tax Court or in other forums.

Section 6. Paperwork Reduction Act

The collection of information contained in this announcement has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1885. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB number. The collection of information in this announcement is in section 4 entitled REQUIRED PROCEDURES FOR ELECTING PARTICIPANTS. This information is required to apply the terms of the settlement set forth in this announcement. The information will be used to determine whether the taxpayer has reported the disclosed item properly for income tax purposes. The collection of information is required to obtain the benefit described in this announcement. The likely respondents are businesses or other for-profit institutions, small businesses or organizations, and individuals.

The estimated total annual reporting burden is 5000 hours.

The estimated annual burden per respondent varies from 3 hours to 7 hours, depending on individual circumstances,

with an estimated average of 5 hours. The estimated number of respondents is 1000.

The estimated frequency of responses is one time per respondent.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

CONTACT INFORMATION

For additional information regarding this announcement, including answers to frequently asked questions, see www.irs.gov, or contact Paul Zamolo of the Office of Division Counsel (SB/SE) at (415) 744-9217 (not a toll-free number) or James Fee of the Office of Division Counsel (LMSB) at (215) 597-3442 (not a toll-free number).

Loss Limitation Rules; Correction

Announcement 2004-47

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to T.D. 9118, 2004-15 I.R.B. 718 [69 FR 12799], which was published in the **Federal Register** on Thursday, March 18, 2004, relating to certain aspects of the temporary regulations addressing the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group and to the consequences of treating subsidiary stock as worthless.

DATES: This correction is effective on March 18, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Weiss (202) 622-7790 or Lola Johnson (202) 622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (T.D. 9118) that are the subject of this correction is under 1502 of the Internal Revenue Code.

Need for Correction

As published, T.D. 9118 contains errors that may prove to be misleading and are in need of clarification.

* * * * *

Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendments:

PART 1 — INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§1.1502-35T [Corrected]

Par. 2. Section 1.1502-35T(f)(1), the language “expired as of the day following the last” is removed and the language “expired as of the beginning of the day following the last”.

Par. 3. Section 1.1502-35T(f)(1), the language “shall be treated as expired as of the day” is removed and the language “shall be treated as expired as of the beginning of the day”.

LaNita Van Dyke,
*Acting Chief, Publications
and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).*

(Filed by the Office of the Federal Register on May 5, 2004, 8:45 a.m., and published in the issue of the Federal Register for May 6, 2004, 69 FR 25315)

Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

Announcement 2004-49

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another

person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin

their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

[Sec. 7601(b)]

(b) PENALTIES.—

For penalties applicable to forcible obstruction or hindrance of Treasury officers or employees in the performance of their duties, see section 7212.

[Sec. 7602]

SEC. 7602. EXAMINATION OF BOOKS AND WITNESSES.

[Sec. 7602(a)]

(a) AUTHORITY TO SUMMON, ETC.—For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

Amendments

• 1982, Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248)

P.L. 97-248, § 333(a):

Amended Code Sec. 7602 by striking out "For the purpose" and inserting "(a) Authority to Summon, Etc.—For the purpose". Effective 9-4-82.

• 1976, Tax Reform Act of 1976 (P.L. 94-455)

P.L. 94-455, § 1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective 2-1-77.

[Sec. 7602(b)]

(b) PURPOSE MAY INCLUDE INQUIRY INTO OFFENSE.—The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

Amendments

• 1982, Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248)

P.L. 97-248, § 333(a):

Added Code Sec. 7602(b). Effective 9-4-82.

[Sec. 7602(c)]

(c) NOTICE OF CONTACT OF THIRD PARTIES.—

(1) GENERAL NOTICE.—An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

(2) NOTICE OF SPECIFIC CONTACTS.—The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

(3) EXCEPTIONS.—This subsection shall not apply—

(A) to any contact which the taxpayer has authorized;

(B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person; or

(C) with respect to any pending criminal investigation.

Amendments

• 1998, IRS Restructuring and Reform Act of 1998 (P.L. 105-206)

P.L. 105-206, § 3417(a):

Amended Code Sec. 7602, as amended by Act Sec. 3412, by redesignating subsections (c) and (d) as subsections (d)

and (e), respectively, and by inserting after subsection (b) a new subsection (c). Effective for contacts made after the 180th day after 7-22-98.

[Sec. 7602(d)]

(d) NO ADMINISTRATIVE SUMMONS WHEN THERE IS JUSTICE DEPARTMENT REFERRAL.—

(1) LIMITATION OF AUTHORITY.—No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.

(2) JUSTICE DEPARTMENT REFERRAL IN EFFECT.—For purposes of this subsection—

(A) IN GENERAL.—A Justice Department referral is in effect with respect to any person if—

(i) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws, or

(ii) any request is made under section 6103(h)(3)(B) for the disclosure of any return or return information (within the meaning of section 6103(b)) relating to such person.

(B) TERMINATION.—A Justice Department referral shall cease to be in effect with respect to a person when—

(i) the Attorney General notifies the Secretary, in writing, that—

(I) he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws,

(II) he will not authorize a grand jury investigation of such person with respect to such an offense, or

(III) he will discontinue such a grand jury investigation,

(ii) a final disposition has been made of any criminal proceeding pertaining to the enforcement of the internal revenue laws which was instituted by the Attorney General against such person, or,

(iii) the Attorney General notifies the Secretary, in writing, that he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws relating to the request described in subparagraph (A)(ii).

(3) TAXABLE YEARS, ETC., TREATED SEPARATELY.—For purposes of this subsection, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of this title shall be treated separately.

Amendments

• 1998, IRS Restructuring and Reform Act of 1998 (P.L. 105-206)

P.L. 105-206, § 3417(a):

Amended Code Sec. 7602, as amended by Act Sec. 3412, by redesignating subsection (c) as subsection (d). Effective for contacts made after the 180th day after 7-22-98.

• 1982, Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248)

P.L. 97-248, § 333(a):

Added Code Sec. 7602(c). Effective 9-4-82.

[Sec. 7602(e)]

(e) LIMITATION ON EXAMINATION ON UNREPORTED INCOME.—The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.

Amendments

• 1998, IRS Restructuring and Reform Act of 1998 (P.L. 105-206)

P.L. 105-206, § 3412:

Amended Code Sec. 7602 by adding at the end a new subsection (d). Effective 7-22-98.

P.L. 105-206, § 3417(a):

Amended Code Sec. 7602, as amended by Act Sec. 3412, by redesignating subsection (d) as subsection (e). Effective for contacts made after the 180th day after 7-22-98.

[Sec. 7603]

SEC. 7603. SERVICE OF SUMMONS.

[Sec. 7603(a)]

(a) IN GENERAL.—A summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall be served by the Secretary, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.